

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7802

WAYNE RALPH MARSHALL,

Petitioner - Appellant,

versus

SCOTT C. VACHRIS, Assistant Commonwealth
Attorney; MISHELENE N. MINOT, Commonwealth
Witness; PAGE TRUE,

Respondents - Appellees.

No. 03-7761

WAYNE RALPH MARSHALL,

Petitioner - Appellant,

versus

SCOTT C. VACHRIS, Assistant Commonwealth
Attorney; MISHELENE N. MINOT, Commonwealth
Witness; PAGE TRUE,

Respondents - Appellees.

Appeals from the United States District Court for the Eastern
District of Virginia, at Alexandria. Gerald Bruce Lee, District
Judge. (CA-02-816)

Submitted: March 8, 2004

Decided: March 16, 2004

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Wayne Ralph Marshall, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

In these consolidated appeals, Wayne Ralph Marshall seeks to appeal the district court's orders dismissing his 28 U.S.C. § 2254 (2000) petition as untimely and for failing to comply with a court order, and denying his motion for reconsideration.* An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2254 petition solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir. 2001) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

In No. 03-7761, we have independently reviewed the record and conclude that Marshall has not made the requisite showing. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Accordingly, we deny a certificate of appealability and dismiss the appeal.

*The district court previously entered an order dismissing Marshall's petition for failure to comply with a court order. In case no. 02-7802, this Court remanded the matter to the district court so that the court could rule on Marshall's motion for reconsideration. After the court granted Marshall's motion for reconsideration, the court dismissed Marshall's petition as untimely and an appeal followed (case no. 03-7761).

In No. 02-7802, we dismiss the appeal as moot because the district court granted reconsideration of its order dismissing Marshall's § 2254 petition for failure to comply with a court order.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED